

701—7.27 (9C,91C) Procedure for nonlocal business entity bond forfeitures. Upon the failure of a transient merchant or an out-of-state contractor to pay any taxes payable, the amount of bond posted with the secretary of state by the transient merchant or out-of-state contractor necessary to pay the tax shall be forfeited. The following subrules of this rule shall govern the procedure for that forfeiture.

7.27(1) Definitions.

a. “*Nonlocal business entity*” is either an out-of-state contractor or a transient merchant as those terms are defined in paragraphs “*b*” and “*f*.”

b. “*Out-of-state contractor*” means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

c. “*Taxes payable by a transient merchant*” refers to all taxes administered by the department, and penalties, interest, and fees which the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

d. “*Taxes payable by an out-of-state contractor*” means tax, penalty, interest, and fees which the department, another state agency, or a subdivision of the state, has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

e. “*Taxes payable*” means any amount referred to in subparagraphs “*c*” and “*d*” above.

f. “*Transient merchant*” shall be defined, for the purposes of this rule, as that phrase is defined in Iowa Code section 9C.1.

7.27(2) Increases in existing bonds. If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities which will become due and owing under the contract in the future.

7.27(3) Responsibility for notification. Concerning taxes payable by an out-of-state contractor, which are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond which the out-of-state contractor must post.

7.27(4) Initial notification. After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to a nonlocal business entity and its surety of record, if any. Notice sent to a nonlocal business entity or its surety shall be sent to the last known address as reflected in the records of the secretary of state. The notice sent to an out-of-state contractor shall also be mailed to the contractor’s registered agent for service of process, if any, within Iowa. This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity’s bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

7.27(5) Protest to bond forfeiture. The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protests to other departmental action in 701—7.8(17A). The caption of the application shall be basically in the form set out in subrule 7.8(1) except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in subrule 7.8(2). However, referring to subrule 7.8(2), paragraph “*a*,” the nonlocal business entity shall state the date of the notice described in subrule 7.27(4). With regard to subrule 7.8(2), paragraph “*c*,” in the case of a tax payable which is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department’s administrative law judge in the manner described in 701—7.8(17A). The docketing of an application for hearing shall follow the procedure for the docketing of a protest under that rule.

7.27(6) *Prehearing, hearing and rehearing procedures.* The following Chapter 7 rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) to 701—7.7(17A), 701—7.9(17A) to 701—7.13(17A), 701—7.15(17A) to 701—7.21(17A), 701—7.23(17A), and subrule 7.14(2). The strictures of subrule 7.14(1) are not applicable to contested cases arising under this rule.

7.27(7) *Sureties and state departments other than revenue.* A surety shall not have standing to contest the amount of any tax payable.

If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule, and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.